

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

ETHAN PHELAN MELZER,  
a/k/a “Etil Reggad,”

Defendant.

S1 20 Cr. 314 (GHW)

**GOVERNMENT’S PROPOSED EXAMINATION OF PROSPECTIVE JURORS**

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The Government respectfully requests, pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure, that the Court include the following questions in its examination of prospective jurors. The Court is requested to pursue more detailed questioning if a particular juror’s answer reveals that further inquiry is appropriate. If further questions might influence other prospective jurors, or might prove embarrassing to the juror, the Government requests that such questioning take place at the bench or in the robing room. The Government further requests that all follow-up questioning conclude with an inquiry whether the particular facts or circumstances at issue would influence the juror in favor of, or against, either the Government or the defendant.

**I. Introduction**

1. This is a criminal case. The defendant, Ethan Melzer, has been charged in an Indictment filed by a grand jury sitting in this District with violating federal laws.

2. The Indictment contains seven counts. The Indictment is not evidence itself. It simply contains the charges that the Government is required to prove to the satisfaction of the jury beyond a reasonable doubt. Those of you who are selected to sit on this jury will receive a detailed explanation of the charges at the conclusion of the case, but I would like to briefly summarize the

charges now in order to determine whether there is anything about the nature of this case that may make it difficult or inappropriate for any of you to serve on the jury.

3. Count One of the Indictment charges the defendant with participating in a conspiracy to murder U.S. nationals abroad.

4. Count Two charges the defendant with attempting to murder U.S. nationals abroad.

5. Count Three charges the defendant with participating in a conspiracy to murder U.S. service members.

6. Count Four charges the defendant with attempting to murder U.S. service members.

7. Count Five charges the defendant with providing and attempting to provide material support and resources for terrorism.

8. Count Six charges the defendant with illegally transmitting national defense information.

9. Count Seven charges the defendant with illegal delivery of national defense information.

10. Do you have any personal knowledge of the charges or the events charged in the Indictment as I have described them?

11. Have any of you heard, read, or seen anything about this case? If so, is there anything that you have heard, read, or seen that for any reason would prevent you from rendering a fair and impartial judgment in this case?

## **II. Parties and Counsel**

12. As you know, the defendant in this case is Ethan Melzer. Mr. Melzer, please stand and face the prospective jurors, both in the jury box and in the back of the courtroom. Does any juror know the defendant in this case?

13. Mr. Melzer is represented by Jonathan Marvinny, Hannah McCrea, and Ariel Werner. [*Ask counsel to stand.*] Do you know any of these people? Have you, or has any relative or close friend, had any dealings with these individuals?

14. The Government is represented here by the United States Attorney for the Southern District of New York, who is Damian Williams. This trial will be in the immediate charge of Assistant United States Attorneys Sam Adelsberg and Matthew Hellman. They will be assisted by Charlotte Cooper, a paralegal of the United States Attorney's Office, and Task Force Officer Faye Stephan of the Federal Bureau of Investigation. [*Ask all to stand.*] Do any of you know any of these people? Have you, or has any relative or close friend, had any dealings with any of these individuals, the United States Attorney's Office for the Southern District of New York, or the FBI?

### **III. Witnesses, Locations, and Evidence**

I will now list the names of potential witnesses in this case and other individuals, entities, and locations that may be mentioned during the trial [*list to be provided in advance of trial*].

15. Have you, or has any relative or close friend, had any dealings with any of these individuals or entities? If so, is there anything about your familiarity with or knowledge of these individuals or entities that could affect your ability to be fair and impartial in this case?

16. Are you familiar with any of the general areas or specific locations that I have listed? If so, is there anything about your familiarity with or knowledge of these areas or locations that could affect your ability to be fair and impartial in this case?

17. The witnesses in this case will include law enforcement and military personnel, including personnel from the FBI and the U.S. Army. Would you be more likely to believe or disbelieve a witness merely because he or she is a law enforcement officer or member of the military?

18. You may hear testimony in this case from one or more “expert” witnesses. Does any of you have any feelings about the use of expert witnesses that could affect your ability to be fair and impartial in this case?

19. Some of the evidence in this trial was obtained through searches conducted by law enforcement officers and interviews of the defendant conducted by law enforcement officers. I instruct you that none of these techniques in this case violated the defendant’s rights. It is therefore proper for this evidence to be introduced at trial for your consideration. Nevertheless, do you have any feelings or opinions about the use of evidence obtained in law enforcement searches or interviews that could affect your ability to be fair and impartial in this case?

20. Does anyone have any expectations about whether certain types of evidence should be presented by the Government at a criminal trial? Would any of you be unable to follow my instructions that the Government is not required to use any particular technique investigating and presenting evidence of a crime?

#### **IV. Relationship with Parties**

21. Are you, or is any relative or close friend, employed by any federal department or agency, part of the U.S. military, any law enforcement agency, or prosecutor’s office, whether federal, state or local?

22. Have you, or has any relative or close friend, ever applied for a position with any law enforcement agency, including the FBI, or the U.S. military?

23. Do any of you have any bias, prejudice, or other feelings for or against the United States Department of Justice, United States Attorney’s Office, the FBI, or any other law enforcement agency, or the U.S. military?

24. Have you, or has any relative or close friend, ever been employed by a criminal defense lawyer or private investigator?

25. Do you have any bias, prejudice, or other feelings for or against criminal defense attorneys or public defenders' offices?

**V. Questions Specific to the Case**

26. Have any of you formed an opinion that the actions charged in the Indictment, as I have described them to you, should not be a crime, or that the laws governing these offenses should not be enforced, or that these crimes should not be prosecuted by the United States government?

27. As I mentioned, some of the charges in this case allege that the defendant conspired and attempted to murder members of the United States armed forces. Do these allegations make it difficult for any of you to render a fair and impartial verdict in this case?

28. In addition, some of the charges allege that the defendant attempted to provide material support to terrorists. Do these allegations make it difficult for any of you to render a fair and impartial verdict in this case?

29. In addition, some of the charges allege that the defendant illegally transmitted and attempted to illegally transmit national defense information. Do these allegations make it difficult for any of you to render a fair and impartial verdict in this case?

30. Some of the evidence in this case will relate to the defendant's alleged activities with, and provision of national defense information to, members of a white-supremacist, neo-Nazi, and pro-jihadist group called the Order of Nine Angles or O9A. Do these allegations make it difficult for any of you to render a fair and impartial verdict in this case?

31. In addition, some of the evidence in this case will relate to the defendant's alleged communications in which various forms of violence, including sexual violence, were discussed.

Do these allegations make it difficult for any of you to render a fair and impartial verdict in this case?

**VI. Prior Jury Service**

32. Have you ever served as a juror before in any type of case? If so, please state whether the case was in state or federal court, whether it was a civil or criminal matter, and, without telling us what the verdict was, whether a verdict was reached.

33. Have you ever served as a grand juror? If so, please indicate where and when you served, and describe, in general terms, the kind of cases you heard.

34. For those of you who have described prior jury service, is there anything about your prior experiences as a juror that would prevent you from acting as a fair and impartial juror in this case?

**VII. Experience as a Crime Victim and with the Court System**

35. Have you, or has any relative or close friend, ever been the victim of a crime? If you would feel uncomfortable answering this question in open court, please say so and we can follow up at the sidebar. If you answer yes, please describe the circumstances, including the type of crime, when it happened, and the outcome of any law enforcement action. Is there anything about that experience that could affect your ability to be fair and impartial in this case?

36. Have you, or has any relative or close friend, ever participated in a state or federal court case, whether criminal or civil, as a witness, plaintiff, or defendant? If so, what kind of case? And, what was your role in that case?

37. Have you or any relative or close friend ever been involved or appeared as a witness in any investigation by a federal or state grand jury or by a congressional or state legislative

committee, licensing authority, or governmental agency, or been questioned in any matter by any federal, state, or local law enforcement agency?

38. Have you, or has any relative or close friend, ever been subpoenaed for any inquiry or investigation? If so, is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case?

39. Have you, or has any relative or close friend, ever been arrested or charged with a crime? If so, is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case? Again, if you would prefer not to give your answer in open court, please say so.

40. Have you, or has any relative or close friend, ever been the subject of any investigation or accusation by any grand jury, state or federal, or any other investigation? If so, is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case?

41. Are you, or are any of your relatives or close friends, attorneys?

42. Have you, or has any member of your family or any of your close friends – either as individuals or in the course of their business affairs – ever been a party to a legal action or dispute with the United States, or with any of the officers, departments, agencies, or employees of the United States, including the United States Attorney’s Office, the FBI, or the U.S. military? Have any of you had any legal, financial, or other interest in any such legal action or dispute or its outcome? Have you, or has any member of your family, ever had such a dispute concerning money owed to you by the government or owed by you to the government? If so, is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case?

## **VIII. Trial Administration**



43. I expect this trial to take approximately one to two weeks. Do any of you have any physical, mental, psychological, or personal problems that would prevent you from serving in this case for the time period that I have indicated?

44. Do any of you have any difficulty with your sight or hearing that could affect your ability to follow these proceedings?

45. Are any of you taking any medication that would prevent you from giving full attention to all of the evidence at this trial?

46. Do any of you have any difficulty understanding or reading the English language?

**IX. Function of the Court and Jury**

47. Under the law, the facts are for the jury to decide and the law is for the Court. The two areas are separate and distinct. At the end of the case, I will instruct the jury on the law, and the jury is required to accept and apply the law as I explain it. If you are on the jury, you must accept the law as I explain it, even if you disagree with my explanation of the law. Do any of you believe that you would have any difficulty following this instruction?

48. Under the law, a defendant is presumed to be innocent and cannot be found guilty of the crime charged in an indictment unless a jury, after having heard all of the evidence in the case, unanimously decides that the evidence proves the defendant's guilt beyond a reasonable doubt with respect to the crime charged. Would any juror have difficulty accepting and applying this rule of law?

49. In a criminal case the burden of proof remains with the Government. It never shifts to the defendant. For a jury to return a verdict of guilty as to a particular charge in an indictment, the Government must prove each and every element of that charge beyond a reasonable doubt. A person charged with a crime has absolutely no burden to prove that he or she is not guilty and is

under no obligation to present any evidence on his own behalf. Would any juror have difficulty accepting and applying this rule of law?

50. Under the law, if the defendant elects not to testify or present evidence, the jury may not draw any adverse inference against the defendant based on that decision. That fact may not enter into the jury's deliberation. Would any juror have difficulty in following this principle?

51. Have you, either through any experience you have had or anything you have seen or read, developed any bias or prejudice, positive or negative, based on race, religion, national origin, or ethnicity that may inhibit your ability to be a fair and impartial juror in this case?

52. I don't know if the case will generate any publicity, but if it does, each juror must absolutely avoid reading about this case in the newspapers or on the Internet or social media outlets or listening to any radio or television reports concerning the case until after it is over. To the extent that this case has already generated media coverage, each juror must avoid reading past news stories. Does any juror believe he or she may have difficulty following this instruction?

53. You are required by law to make your decision based solely on the evidence or lack of evidence presented in court, and not on the basis of conjecture, suspicion, sympathy, or prejudice. Would any juror have difficulty accepting and applying this rule of law?

54. Under the law, the question of punishment, if any, is for the Court – that is, for me – to decide, and thus the issue of possible punishment must not enter into your deliberations as to whether the defendant on trial here has been proven guilty beyond a reasonable doubt. Would any juror have difficulty accepting and applying this instruction?

55. It is not a particularly pleasant duty to find another individual guilty of committing a crime. Do any of you feel that, even if the evidence established the guilt of the defendant beyond

a reasonable doubt, you might not be able to render a guilty verdict against him for reasons unrelated to the law and the evidence, including any religious, philosophical, or other belief?

56. On the other hand, if the Government fails to prove the defendant's guilt beyond a reasonable doubt on a particular count, is there any juror who feels he or she could not render a verdict of not guilty on that count or counts?

57. Do any of you believe that our system of criminal justice improperly favors either the prosecution or the defense?

#### **X. Other Biases**

58. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior questions, does any juror have the slightest doubt in his or her mind, for any reason, that he or she will be able to serve conscientiously, fairly, and impartially in this case and to render a true and just verdict without fear, favor, sympathy, or prejudice, and according to the law as it will be explained?

#### **XI. Jurors' Backgrounds**

59. The Government respectfully requests that the Court ask each juror to state the following information:

- (1) the juror's family status;
- (2) the county (but not the town) in which the juror resides;
- (3) the juror's occupation (but not employer) and educational background;
- (4) the county (but not the town) where the juror's employer is located;
- (5) the period of employment with that employer;
- (6) the same information concerning other employment within the last five years;
- (7) the same information with respect to the juror's spouse and any working children;

- (8) what websites, newspapers and/or magazines the juror reads and how often;
- (9) the sources from which the juror typically receives his or her news; and
- (10) what television programs the juror regularly watches.

**XII. Requested Instruction Following Impaneling of the Jury**

60. You, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial, you must not conduct any independent research about this case, the matters in this case, and the individuals and entities involved in the case. In other words, you should not consult dictionaries or reference materials, search the Internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. From this point until the time when you retire to deliberate your verdict, it is your duty not to discuss this case, and not to remain in the presence of other persons who may be discussing this case. The rule about not discussing the case with others includes discussions even with members of your own family, and your friends. If at any time during the course of this trial, any person attempts to talk to you or to communicate with you about this case, either in or out of the courthouse, you should immediately report such an attempt to me through my deputy clerk and to no one else. When I say report that to no one else, I mean that you should not tell anyone, including your fellow jurors.

61. In this regard, let me explain to you that the attorneys and the defendant in a case are not supposed to talk to jurors, not even to offer a friendly greeting. So if you happen to see any of them outside this courtroom, they will, and should, ignore you. Please do not take offense. They will be acting properly by doing so. In this connection, when the Court is in recess, please stay either in the jury room or somewhere outside the courtroom. Please do not wait in the courtroom.

62. Finally, if anything should happen involving any juror which is of an unusual nature, or which you think is something the judge should be told about, do not discuss it with any other juror. Simply give the clerk a note to the effect that you want to speak to me about it and I can then hear what it is and what you have to say. I make these remarks without expecting anything unusual or improper to happen. It is just safer to take the precaution of alerting you in advance.

Dated: New York, New York  
February 1, 2022

Respectfully submitted,

DAMIAN WILLIAMS  
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By:                     /s/                      
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Cc: Defense Counsel  
(Via ECF)